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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 02-11280-RWZ

ARIAD PHARMACEUTICALS, INC.,  
MASSACHUSETTS INSTITUTE OF TECHNOLOGY,  
THE WHITEHEAD INSTITUTE FOR BIOMEDICAL RESEARCH,  
and THE PRESIDENT AND FELLOWS OF HARVARD COLLEGE

v.

ELI LILLY & COMPANY

QUESTIONS TO THE JURY ON SPECIAL VERDICT

April 28, 2006

ZOBEL, D.J.

INFRINGEMENT

Evista

1 (a) Does a patient who takes Evista in accordance with the product label for prevention and/or treatment of osteoporosis infringe claim 80 and/or claim 95 of the '516 patent?

Claim 80: YES X NO \_\_\_\_\_  
Claim 95: YES X NO \_\_\_\_\_

If the answer is YES as to one or both claims, please answer the corresponding part of Questions 1 (b) and 1 (c).

If the answer is NO as to both claims, please answer next Question 2 (a).

Inducement to Infringe

1 (b) Did defendant Eli Lilly induce infringement of claim 80 and/or claim 95 by selling or causing a third party to sell Evista to such patients?

Claim 80: YES X NO \_\_\_\_\_  
Claim 95: YES X NO \_\_\_\_\_

Contributory Infringement

1 (c) Did defendant Eli Lilly contributorily infringe claim 80 and/or claim 95 by selling or causing a third party to sell Evista?

Claim 80: YES X NO \_\_\_\_\_  
Claim 95: YES X NO \_\_\_\_\_

Xigris

2 (a) Does a patient who takes Xigris in accordance with the product label for treatment of severe sepsis infringe claim 144 and/or claim 145?

Claim 144: YES X NO \_\_\_\_\_  
Claim 145: YES X NO \_\_\_\_\_

If the answer is YES as to one or both claims, please answer the corresponding part of Questions 2 (b) and 2 (c).

If the answer is NO as to both claims, please answer next Question 3.

Inducement to Infringe

2 (b) Did defendant Eli Lilly induce infringement of claim 144 and/or claim 145 of the '516 patent by selling or causing a third party to sell Xigris?

Claim 144: YES X NO \_\_\_\_\_  
Claim 145: YES X NO \_\_\_\_\_

Contributory Infringement

2 (c) Did defendant Eli Lilly contributorily infringe claim 144 and/or claim 145 by selling or causing a third party to sell Xigris?

Claim 144: YES  NO \_\_\_\_\_

Claim 145: YES  NO \_\_\_\_\_

Please answer next Questions 3 and 4 through 7 as to all claims.

VALIDITY

Filing Date

3. The effective filing date of the '516 patent is

a) April 21, 1989

b) November 13, 1991 \_\_\_\_\_

Anticipation

4. Are one or more of the asserted claims of the '516 patent invalid because the claimed process was anticipated by a single prior art publication or reference?

Claim 80: YES \_\_\_\_\_ NO

Claim 95: YES \_\_\_\_\_ NO

Claim 144: YES \_\_\_\_\_ NO

Claim 145: YES \_\_\_\_\_ NO

5. Are one or more of the asserted claims of the '516 patent invalid because the claimed process was anticipated by prior public use?

Claim 80: YES \_\_\_\_\_ NO

Claim 95: YES \_\_\_\_\_ NO

Claim 144: YES \_\_\_\_\_ NO

Claim 145: YES \_\_\_\_\_ NO X

Enablement

6. Are one or more of the asserted claims of the '516 patent invalid for failing to satisfy the enablement requirement?

Claim 80: YES \_\_\_\_\_ NO X

Claim 95: YES \_\_\_\_\_ NO X

Claim 144: YES \_\_\_\_\_ NO X

Claim 145: YES \_\_\_\_\_ NO X

Written Description

7. Are one or more of the asserted claims of the '516 patent invalid for failure to satisfy the written description requirement?

Claim 80: YES \_\_\_\_\_ NO X

Claim 95: YES \_\_\_\_\_ NO X

Claim 144: YES \_\_\_\_\_ NO X

Claim 145: YES \_\_\_\_\_ NO X

If you found infringement of one or more claims and also that those claims are valid, please answer next the questions concerning damages. That is, if you answered YES to one or more parts of Questions 1 and 2, and NO to each corresponding part of Questions 3 through 7, please answer next the corresponding questions concerning damages.

If you found either no claims to be infringed by answering NO to all parts of Questions 1 and 2, or if you found all infringed claims to be invalid by answering YES to all parts of Questions 3 through 8, please return your verdict to the court.

**DAMAGES**

**Reasonable Royalty**

8. What is the reasonable royalty for infringement of any valid claim?

2.3 %

**Evista**

9 (a) What amount of Evista Net Sales should serve as the royalty base for computing damages?

\$ 2,418,553,338.00

9 (b) The amount of damages attributable to Evista sales is

\$ \_\_\_\_\_

**Xigris**

10 (a) What amount of Xigris sales should serve as the royalty base for computing damages?

\$ 415,513,335.00

10 (b) The amount of damages attributable to Xigris sales is

\$ \_\_\_\_\_

**Pre-Judgment Interest**

11 (a) Should pre-judgment interest be awarded on the amounts determined in Questions 9 (b) and 10 (b)?

YES \_\_\_\_\_ NO X

If the answer to Question 11 (a) is YES, please answer Question 11 (b).

If the answer to Question 11 (a) is NO, please return your verdict to the court.

11 (b) The rate of pre-judgment interest is — %

5-4-06

DATE

Jamie E. Crossman  
FOREPERSON'S SIGNATURE

MEANING OF CLAIM TERMS

Term	Court's Construction
Reducing NF- $\kappa$ B Activity	Decreasing the function of NF- $\kappa$ B to act as an intracellular messenger that regulates transcription of particular genes, in response to certain stimuli
Reducing Binding of NF- $\kappa$ B to NF- $\kappa$ B Recognition Sites on Genes Which Are Transcriptionally Regulated by NF- $\kappa$ B	Decreasing binding of NF- $\kappa$ B to DNA sequences specifically recognized by NF- $\kappa$ B, where such DNA sequences are in genes whose transcription is regulated by increasing or decreasing NF- $\kappa$ B activity, and where binding denotes a chemical and/or physical interaction between NF- $\kappa$ B and specific DNA sequences.
So As to Reduce Bacterial Lipopolysaccharide-Induced Expression of Said Cytokines in the Cells	To decrease expression of cytokines in the cells, where expression of those cytokines is caused by bacterial lipopolysaccharide and where expression refers to the process by which the cell interprets its genetic information to make proteins
Immune Cells	Specialized cells that defend the body against infection. Immune cells are present in all body tissues, the blood stream, and the lymphatic system, and derive from a common precursor cell known as a hematopoietic stem cell. They include T cells, B cells, natural killer cells, monocytes and other monocyte derivatives, macrophages, neutrophils, eosinophils, mast cells, and basophils. Although these cells typically function to eliminate harmful foreign invaders, immune cells occasionally mistake the body's own tissues as non-self (causing autoimmune disease) or attack harmless foreign substances or donated organs (causing allergy or organ rejection).

NF- $\kappa$ B	a protein factor that; (a) resides in the cytoplasm as an inactive precursor bound to an I $\kappa$ B inhibitor protein; (b) when released from the inhibitor, travels to the nucleus of the cell; (c) once in the nucleus, functions to turn on transcription of certain genes by binding to specific DNA recognition sequences in those genes
A method for . . . in cells	These claims encompass methods wherein NF- $\kappa$ B is modulated in cells, regardless of where they are found.
NF- $\kappa$ B mediated intracellular signaling	Molecular communication within cells effected by, or conveyed through, NF- $\kappa$ B
Such that NF- $\kappa$ B-mediated effects of external influences are modified	Changing or altering effects that are both caused by an inducing substance outside the cell and are conveyed through NF- $\kappa$ B
Cytokines	Secreted polypeptides (proteins) that affect the functions of other cells, and which are important for the interactions between cells in the immune response. There are many different cytokines, one example of which is TNF- $\alpha$ .
Activated by extracellular influences	Stimulated by one or more inducing substances outside the cell